

EXECUTIVE OFFICER SUMMARY REPORT
September 11, 2002

ITEM: 9

SUBJECT: **PUBLIC HEARING (continued):** Complaint No. R9-2002-0053 for administrative assessment of civil liability for violation of Water Code section 13267, against Mr. Ernest Moretti for failure to submit a technical report. (Barry S. Pulver)

PURPOSE: To continue the hearing begun on April 10, 2002, to receive testimony from Mr. Moretti, and other interested persons regarding Mr. Moretti's ability to pay the administrative civil liability (ACL) proposed in Complaint No. R9-2002-0053 (Document 1), and regarding compliance milestones since the last hearing on April 10, 2002. Following the hearing, the Regional Board may consider adoption of an order imposing civil liability in the amount recommended or an alternative amount; tentative Order No. R9-2002-0085 (Document 2) would impose civil liability in the amount recommended.

PUBLIC NOTICE: The public was notified of this hearing in the agenda for the September 11, 2002 meeting of the Regional Board. The agenda was mailed to interested persons on August 30, 2002, together with copies of the tentative order.

DISCUSSION: Mr. Moretti failed to submit a technical report regarding soil and groundwater investigation at the former Santa Ysabel Chevron site on February 24, 2000, as required by the Regional Board pursuant to Water Code section 13267 (Document 4). The report was submitted on April 9, 2002, over 2 years late.

Based upon consideration of the factors set forth in Water Code section 13268 as discussed in the Technical Analysis (Document 3), the recommended amount of civil liability presented in Tentative Order No. RB9-2002-0085 was \$55 per day of violation for 775 days (up to the anticipated date of issuance of the Order). Subsequently, based on Mr. Moretti's submission of the required technical report, the period of the alleged violation should be reduced by one day; the corrected amount of the recommended ACL would be reduced by \$55 to a total of \$42,570.

A summary of the factual and analytical evidence supporting the ACL for this violation is presented in the Staff Report and Addendum No. 1 (Documents 3 and 9).

On April 10, 2002, the Regional Board voted to continue the hearing after Mr. Moretti had submitted financial documents to support his contention that he did not have the ability to pay the ACL. Mr. Moretti submitted the documents, which were analyzed by the Economics and Effectiveness Unit of the State Water Resources Control Board (State Board).

The analysis (Document 8) indicates that payment of the ACL could be a financial hardship to Mr. Moretti because the amount of the ACL is more than his annual income. The ACL will not interfere with his ability to bring his operations into compliance with Cleanup and Abatement Order (CAO) No. 99-26 because the Underground Storage Tank Cleanup Fund will reimburse him for cleanup expenses. The ACL will not prevent him from continuing the rental business for which the property is used.

According to the State Board's Enforcement Policy, a downward adjustment for ability to pay should only be made in cases where the discharger is cooperative and has the ability and the intention to bring operations into compliance within a reasonable amount of time. A reduction in the amount of the ACL is not recommended because Mr. Moretti was not cooperative for a period of over 2 years, until the complaint was issued. Further, Mr. Moretti has not demonstrated he can achieve compliance with the CAO within a reasonable time frame by submitting a corrective action plan, now over 800 days late.

The potential maximum liability for this violation at \$1,000 per day of violation is \$774,000. The recommended ACL amount of \$55 per day of violation, for a total of \$42,570, is based on the severity of the violation, the potential threat to water quality from the discharge, and Mr. Moretti's record of non-compliance (Document 3). The total staff costs incurred by the Regional Board and Office of Chief Counsel is estimated to be \$12,625. Considering these factors, the proposed civil liability calculated at \$55.00 per day of violation for 774 days of violation for a total of \$42,570 is justifiable.

LEGAL CONCERNS:

There are no known legal concerns.

**SUPPORTING
DOCUMENTS:**

1. Complaint No. R9-2002-0053 (with cover letter).
2. Revised Tentative Order No. R9-2002-0085.
3. Technical Analysis, Proposed Administrative Civil Liability Contained in Complaint No. R9-2002-0053.

4. Order to implement a soil and groundwater investigation and submit a technical report pursuant to Water Code Section 13267.
5. Regulatory History.
6. Site Location Map.
7. Site Vicinity Map.
8. Ability to Pay Analysis.
9. Addendum No. 1 to Technical Analysis, Proposed Administrative Civil Liability Contained in Complaint No. R9-2002-0053.

RECOMMENDATION: Adopt revised tentative order No. R9-2002-0085 (Document 2).